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In the Supreme Court of the United States

No. 872

OCTOBER TERM, 1962.

HARRY A. BLACHMAN,
As a taxpayer,
Petitioner,

against

ERIEVIEW CORPORATION,
CITY OF CLEVELAND, OHIO,
HOUSING AND HOME FINANCE AGENCY,
PUBLIC HOUSING ADMINISTRATION,
ROBERT C. WEAVER, ADMINISTRATOR,
UNITED STATES OF AMERICA,
Respondents.

BRIEF OF CITY OF CLEVELAND AND ERIEVIEW CORPORATION

In Opposition to Petition for Writ of Certiorari.

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I.

OPINIONS.

The opinion of the District Court for the Northern District of Ohio dismissing petitioner's complaint is reprinted as an appendix to this brief.

The opinion of the Court of Appeals for the 6th Circuit affirming the judgment of the District Court is also reprinted as an appendix to this brief.

II.

PRELIMINARY STATEMENT.

This action was filed by a taxpayer of the City of Cleveland, Ohio, seeking to void an agreement between the respondents, City of Cleveland and the United States of America, whereby the two governmental units united in a joint effort to eliminate a blighted area of the City of Cleveland by means of an urban renewal project denominated as "Erieview I, Urban Project No. Ohio R-36."

As a corollary complaint the petitioning taxpayer also sought to annul an agreement between the City of Cleveland and the respondent Erieview Corporation, whereby the Corporation contracted with the City to develop a portion of the Erieview project according to plans and standards approved by both the United States of America and the City of Cleveland.

The Housing and Home Finance Agency and the Public Housing Administration, as the authorized federal administrative agencies together with Robert C. Weaver, their administrator, are also respondents herein.

For purposes of this brief the taxpayer will be referred to as "petitioner," the City of Cleveland as "City" and the United States of America as "United States." All emphasis is that of the writer unless otherwise indicated.

III.

QUESTION PRESENTED.

The only question of law raised by this petition is:

Under the Housing Act of 1949, as amended by the 86th Congress on September 23, 1959, is the federal government authorized to lend financial assistance to a local government for an urban renewal project if the area to be redeveloped is not predominantly residential in character and if such area is to be redeveloped for predominantly nonresidential uses?

IV.

STATEMENT OF THE CASE.

Petitioner questions the right of the City to receive federal assistance to redevelop through its "Erieview" project a decaying downtown commercial area if the redeveloped area is to continue as commercial in character. The fact that practically every large city in the country—New York, Boston, Pittsburgh, Detroit, Youngstown, Toledo, Akron, Minneapolis, St. Paul and Grand Rapids to name but a few—has obtained federal assistance for a similar project does not seem to dampen his ardor.

To effectuate his purpose, petitioner seeks to set aside a loan and capital grant contract between the City and the United States executed on March 3, 1961, which makes possible the elimination of a blighted area of the City with the aid of federal financial assistance. The area to be redeveloped is in the old central core of the City and is zoned for commercial and semi-industrial purposes. It contains a relatively small number of residential occupancies.

Petitioner also attacks the validity of an implementing agreement between the City and Erieview Corporation, whereby the City is to sell a part of the land area encompassed within the Erieview renewal project to the Corporation for redevelopment by the Corporation under City and United States control.

This is the same urban renewal project which was unsuccessfully attacked in *Grisanti vs. City of Cleveland*, 179 N. E. (2) 798 (Ohio C. P. 1961), affirmed 181 N. E. (2) 299 (Ohio Ct. App. 1962), appeal dismissed, 173 O. S. 386, 182 N. E. (2) 586 (1962), appeal dismissed for want of a substantial federal question, 31 USLW 3154 (U. S. Sup. Ct. Nov. 6, 1962).

With the consent of the City this same petitioner was permitted to intervene in the *Grisanti* case as an amicus

curiae. He filed a total of seven briefs in the various courts and in both the Ohio Appellate Court and the Ohio Supreme Court argued the very question which he urges in the instant litigation.

The District Court for the Northern District of Ohio granted a motion of the City in which all respondents joined to dismiss the complaint for failure to state a claim upon which relief could be granted. The judgment of the District Court was affirmed by the United States Court of Appeals for the Sixth Circuit.

V.

ARGUMENT.

REASONS WHY THE WRIT SHOULD BE DENIED.

In order to effectuate his complaint the petitioner has constructed a "straw man" whose very existence evaporates with an analysis of the language incorporated into 42 U. S. C. A. 1460 (c) by the amendment enacted as Section 413 of the Housing Act of 1959. The wording of this amendment is clear, concise and unambiguous. There is absolutely no legal substance to support the petitioner's isolated exercise in semantics.

Nor can petitioner gain any solace from a study of the legislative history of the Housing Act of 1949 as amended to date. For his own purposes, he has remained completely oblivious of the various legislative reports which demonstrate congressional policy and intent with reference to financial assistance to urban renewal areas that are predominantly non-residential in character both before and after redevelopment.

Regardless of merit, however, the very existence of the instant petition is costing the city almost fifty thousand dollars a month in excess interest rates due to its inability to refinance existing loans at a lower rate during

the pendency of this litigation. Such loss is in addition to a diminution in tax revenue because the City is unable to convey clear title to the six million dollars worth of real property appropriated for use in the Erieview urban renewal project due to the cloud generated by this law suit.

1. By Its Express Terms the Housing Act as Amended in 1959 Authorizes the Redevelopment of Nonresidential Areas for Nonresidential Purposes.

The gravamen of petitioner's argument revolves around *his* interpretation of Section 413 of the Housing Act as amended in 1959 which is codified as 42 U. S. C. A. Section 1460 (c). The relevant content of said section reads:

> "Financial assistance shall not be extended under this title with respect to any urban renewal area which is not predominantly residential in character and which, under the urban renewal plan therefor, is not to be redeveloped for predominantly residential uses: *Provided*: *That if the governing body of the local public agency determines that the redevlopment of such an area for predominantly nonresidential uses is necessary for the proper development of the Community, the Administrator may extend financial assistance for such a project*: Provided further, That the aggregate amount of capital grants contracted to be made pursuant to this title with respect to such projects after the date of the enactment of the Housing Act of 1959 shall not exceed 20 per centum of the aggregate amount of grants authorized by this title to be contracted for after such date."

The purpose of the 1959 amendment insofar as it affects the pertinent provision of Section 1460 (c) was to liberalize federal financial assistance in redeveloping areas which were initially nonresidential in character and which were to be redeveloped for predominantly nonresidential uses.

Prior to 1959, federal financial assistance in redeveloping a nonresidential area was contingent upon the area containing a substantial number of slum, blighted, deteriorated or deteriorating dwellings, the elimination of which would promote the public health, safety and welfare. However, in 1959, the Congress made aid requirements less restrictive by providing that a predominantly nonresidential area could be redeveloped for nonresidential purposes if the local governing body determined that such an improvement was necessary for the proper development of the community. In enacting the 1959 amendment to the Housing Act, Congress eliminated the former requirement that a nonresidential area contain a substantial number of blighted and deteriorated dwellings before it could qualify for nonresidential development under the urban renewal laws. At the same time Congress increased the aggregate amount of capital grant available for nonresidential development.

Standing alone the first clause of the relevant 1959 amendment to the Housing Act, as quoted above, indicates that federal financial assistance shall not be extended for the redevelopment of any area which is not predominantly residential in character unless such area is to be redeveloped for predominantly residential uses. *However, this language is immediately qualified by the first proviso which establishes a procedure whereby a predominantly nonresidential area may be redeveloped for a predominantly nonresidential use provided that the local Council or other governing body determines the necessity for such development.* Petitioner makes no contention that the required determination of Council was not made in the present case.

The fact that petitioner has misconstrued the effect of the 1959 amendments to the Housing Act is very obvious

from the arguments found in his brief. He contends that the language of the Proviso relating to "such an area" refers to an area "predominantly residential in character." His position is set forth at page (7) of his petition as follows:

> "Not only does the federal statute require (1) that the subject area be *predominantly residential*, but also (2) that *such an area* must be *redeveloped for predominantly residential uses*; except under conditions which are set forth in the Proviso clause which follows the first part of the statute.
>
> "The Proviso permits *nonresidential development* in *predominantly residential areas*, if the governing body (the City Council here) determines that it is desirable to *redevelop nonresidentially*."

The fallacy of petitioner's contention is readily obvious when one reads the complete text of the statute. The language in the Proviso "such an area" refers back for its association to the previous clause of limitation. In such clause the subject matter is "any urban renewal area which is not predominantly residential in character." Applying this language to the term "such an area" in the Proviso, it reads as follows:

> "Provided: That if the governing body of the local public agency determines that the redevelopment of *any urban renewal area which is not predominantly residential in character* for predominantly nonresidential uses is necessary for the proper development of the community, the administrator may extend financial assistance for such a project."

To our knowledge there is no case law interpreting the language in question and this is easily understandable because an analysis of the wording used in the statute must lead to the conclusion that the Congress in a clear

and unambiguous manner authorized the expenditure of urban renewal funds to redevelop non-residential areas for non-residential purposes. This conclusion is readily supported by the opinions rendered below in both the District and Circuit Courts.

The District Court expressed itself on the question as follows:

> "It is the opinion of the court that the statutory provisions relied on by plaintiff, contrary to his contentions, do provide for financial assistance by the federal government for the redevelopment of downtown nonresidential areas, such as Erieview. *The plaintiff has recited only a part of a statutory provision out of the context of the whole, which leads to mis-interpretation of the act.* The plaintiff is not sustained in his contention that the City of Cleveland, by entering into agreements for financial assistance with reference to Erieview with the Public Housing Administration, has created an illegal debt."

The Circuit Court expressed itself even more forcibly in the opinion of Judge Smith who stated as follows:

> "Appellant's efforts to reword the statute so as to prohibit the contracts in suit are unavailing. The meaning of the statute is quite plain as it is written, even without the strong reinforcement found in the legislative history referred to in Judge Green's memorandum below. The provision in terms authorizes redevelopment of 'such an area.' This plainly refers to 'any urban renewal area which is not predominantly residential * * * and which * * * is not to be redeveloped for predominantly residential uses * * *.' Appellant argues that the statute should be restated in positive terms by eliminating the 'nots.' This may be an interesting exercise in semantics but quite plainly alters the meaning of the language as used, which is that a limited portion (at the time 20%) of the funds only was to be available for redevelopment

of areas neither predominantly residential in origin nor in ultimate use. No claim has been advanced that the requiste determination has not been made by the governing body of the local public agency or that the aggregate amount of capital grants contracted to be made under the proviso in question exceeds 20 per centum of the aggregate amount under the subchapter. *Appellant's contentions on interpretation of the statutory provisions border on the frivolous.*"

2. The Legislative History of the Housing Act of 1949 as Amended Evidences the Clear Intent of Congress to Authorize Federal Financial Assistance in Alleviating Both Residential and Nonresidential Blight Within the Frame Work of Its Urban Renewal Program.

We will not attempt in this brief to duplicate in detail the District Court's excellent analysis of the legislative history of the Housing Act since its inception in 1949. However, we believe it is important to emphasize that even though the initial authorization in the Housing Act made no provision for nonresidential development, subsequent amendments in the years of 1954, 1955, 1956, 1959 and 1961 completely rectified this Congressional omission.

As noted by the District Court the present attitude of Congress is readily apparent from a study of the committee report on the Area Redevelopment Act. The report makes reference to the scope of the urban renewal program as then in operation under the 1959 amendments to the Housing Act and is set forth in the 1961 U. S. Code Congressional and Administrative News, page 1581, stating in part:

"While the primary purpose of the urban renewal program is the elimination of residential slums, there is a growing recognition of the importance of nonresidential slum clearance projects. Sound city planning

> often requires that rundown business districts be rehabilitated or cleared and redeveloped, if the city is to fulfill its proper functions. Such redevelopment provides new opportunities for employment and business expansion. Moreover, experience has shown that public revenues can be increased manyfold by eliminating blight and returning land to its highest and best use. By so increasing tax revenues, such projects enable the local government to meet its many other responsibilities toward its citizens."

Interestingly enough, petitioner at pages 9 and 10 of his petition makes the claim that the language contained in Section 113(b) of the Area Redevelopment Act gives credulity to his interpretation of the meaning of Section 1460(c) of the Housing Act as amended in 1959. Such a contention is figuratively annihilated by a study of the House committee report which sets forth a section by section summary of the Area Redevelopment Act. The committee report as it refers to the sections of the Area Redevelopment Act cited by petitioner at pages 10 and 11 of his petition is found in 1961 U. S. Code Congressional and Administrative News page 1603 and reads:

> "This section amended title I of the Housing Act of 1949 by adding at the end thereof a new section 113 which would permit the use of the slum clearance and urban redevelopment provisions of that title (without regard to certain limitations which would otherwise be applicable) to assist in the establishment or improvement of industrial plants and facilities in areas designated as redevelopment areas under section 5 of the bill. * * *
>
> "Sub-section (b) of the new section 113 would provide that financial assistance could be furnished under title I in areas so certified without regard to the existing requirement that the project area be predominantly residential in character and that it be

redevelopment for predominantly residential uses subject only to the limitation contained in sub-section (e). * * *

"Sub-section (e) of the new section 113 would limit the amount available for assistance as provided in that section to 10 per cent of the funds authorized after the date of enactment of the bill for capital grants under section 103 of title I. However, this amount would be in addition to the amount available under the present exemptions from predominantly residential requirements provided by the next to last paragraph of Section 110(c) of title I, so that projects receiving assistance under the new section 113 would not be competing with projects seeking assistance under the present exemptions (*which permit assistance without regard to the predominantly residential requirements only up to 20 per cent of the total amount of capital grants authorized under such title after September 23, 1959*)."

For additional emphasis, we direct the Court's attention to the legislative history of both the 1959 and 1961 amendments to the Housing Act as they relate to the pertinent provisions of 42 U. S. C. A. Section 1460(c). The history of the 1959 amendment is found in the 1959 U. S. Code Congressional and Administrative News page 2864 and reads:

"Nonresidential Developments (Section 413). Amends Section 110(c) of the Housing Act of 1949 to permit up to 20 per cent of the future capital grant authorization to be used for areas *which are not predominantly residential and which are not to be redeveloped for predominantly residential uses*, even if such areas do not include a substantial number of slum dwellings as presently required."

In 1961, Section 1460(c) was again amended to increase the limitation on nonresidential development from

20 per cent to 30 per cent of the available capital grant funds. The committee commentary on this last amendment is of particular significance since the 1961 amendment, except as to the per centum just noted, made no substantial change in the provisions of Section 1460(c) as effective in 1959. The committee report as set forth in 1961 U. S. Code Congressional and Administrative News page 1952, states:

"Section 309 would permit 30 per cent instead of 20 per cent of urban renewal grant authority to be used for the renewal of areas not fulfilling the predominantly residential requirement of the law.

"*Urban renewal project areas presently are required to be predominantly residential in character either before or after renewal, except 20 percent of available urban renewal grant funds may be devoted to projects without regard to this requirement.* In addition, exceptions to the requirement are provided for disaster areas and for certain projects in the vicinity of colleges or universities. Another exception is to be found in the recently enacted Area Redevelopment Act (Public Law 87-27), to stimulate industrial and commercial development in depressed areas.

"Originally, the Housing Act of 1949 made no provision for such exceptions, as urban renewal was regarded almost solely as a tool for the removal of slums and the provision of good residential neighborhoods. Over the years, however, it became clear that the construction of good neighborhoods was intimately tied to the economic health of the community. The revitalization of industrial, commercial and downtown areas so as to attract job-creating and private investment was realized as a necessary goal to which urban renewal could make a substantial contribution. Consequently, a 10 per cent exception to the 'predominantly residential' requirement was put into the

Housing Act of 1954, and this was raised to 20 per cent in the Housing Act of 1959. Under existing law this amounts to $313.6 million. Practically all of this has been committed at this time.

"With growing attention to the needs for downtown renewal, it appears necessary to increase the exception to provide for a greater number of projects of this type. The economic, institutional and cultural basis of community life are increasingly recognized as necessary to the creation and continuing existence of good homes and sound urban neighborhoods."

We can add nothing to the legislative history pertinent to the 1959 Housing Act. Such history completely dispels all arguments of interpretation proffered by the petitioner.

VI.

CONCLUSION.

We respectfully submit that certiorari should be denied for the reason that no legitimate issue of statutory construction has been presented for the Court's consideration.

Respectfully submitted,

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APPENDIX A.

Opinion of the United States District Court on Motion to Dismiss Plaintiff's Complaint.

GREEN, *J.*:

Plaintiff, as a taxpayer of the City of Cleveland, Ohio, filed his complaint in the United States District Court for the purpose of enjoining further proceedings in the Erieview project in the City of Cleveland (a downtown urban renewal project known as Erieview I Urban Project No. Ohio R. 36) and for an order cancelling agreements entered into between the City of Cleveland and the United States of America, wherein the federal government committed itself to lend to the City of Cleveland funds for the development of Erieview and to cancel the agreement between the City of Cleveland and Erieview Corporation covering the redevelopment of lands in the Erieview area.

Plaintiff's amended complaint alleges that he is a taxpayer of the City of Cleveland, Ohio, and brings this action on behalf of himself and all of the taxpayers of Cleveland. Jurisdiction is predicated on 42 U. S. C. § 1404(a) and Article III, § 2 of the United States Constitution.

The defendants are the Erieview Corporation, the City of Cleveland, the Housing and Home Finance Agency and Public Housing Administration, agencies of the United States, and Robert C. Weaver, the director thereof.

Plaintiff alleges that City of Cleveland and the United States of America entered into an agreement on March 3, 1961, wherein the federal authorities are committed to lend to the City $33,875,784 and to make a capital grant of approximately $10,000,000. These funds are intended for use in a downtown redevelopment project commonly known as Erieview.

Plaintiff further alleges that the City of Cleveland has agreed to sell to the Erieview Corporation a substantial

part of land within Erieview, for redevelopment by the private corporation according to plans and standards agreeable to, and agreed upon by, the United States of America and the City of Cleveland.

Plaintiff alleges in his complaint that the agreements entered into by the City of Cleveland with the United States and the Erieview Corporation are illegal and contrary to the laws of the United States in that the Erieview area is not a blighted predominantly residential area, but in fact is a commercial or industrial area, and that the federal government is forbidden by law from giving financial assistance to such an area.

Plaintiff stated in his complaint that:

> The consideration for both of the aforesaid agreements, relating to the same and adjacent lands, consist of mutual promises partly illegal, in that the federal government is forbidden by Public Law 86-372, 86th Congress, S. 2654, September 23, 1959, 42 U. S. C. § 1460, Title IV, from giving: Financial assistance to any urban renewal area, which is not predominantly residential in character and which, under urban renewal plan therefor, is not to be redeveloped for predominantly residential uses.

Based thereon plaintiff seeks an order that the agreements be declared null and void and that the defendants, generally, be enjoined from any further proceedings related to the Erieview program.

Plaintiff bases his complaint on the fact that he is a taxpayer and will suffer irreparable loss for which he has no adequate remedy at law.

Defendant City of Cleveland initially filed a motion to dismiss the complaint. Thereafter, the Erieview Corporation and the government agencies, being the remaining parties defendant, joined in that motion. This matter is

taken under consideration by the Court on the motions to dismiss, the briefs of the defendant City of Cleveland and plaintiff's briefs opposing the motion to dismiss.

The City of Cleveland in its motion to dismiss alleges

1. The plaintiff lacks standing to invoke the jurisdiction of this court because the complaint does not disclose that he will suffer injury to any legal right.
2. The court lacks jurisdiction because the amount actually in controversy is less than $10,000, exclusive of interest and taxes.
3. The court lacks jurisdiction because there is no diversity of citizenship between the parties.
4. The complaint fails to state a claim upon which injunctive relief can be granted.

The Court will take under consideration in this memorandum the fourth item that "the complaint fails to state a claim upon which injunctive relief can be granted." The City contends that there is no federal question of law involved because the averments in the complaint do not disclose facts upon which the plaintiff would be entitled to relief under any federal statute.

Plaintiff's lawsuit is based on the allegations that the federal government is forbidden to loan funds for redevelopment of areas "not predominantly residential in character" which are "not to be redeveloped for predominantly residential uses," and cites for his authority Public Law 86-372, 86th Congress S. 2654, Sept. 23, 1959, 42 U. S. C. § 1460, Title IV, and he relies on the first portion of this section of the act which reads:

> Financial assistance shall not be extended to any urban renewal area, which is not predominantly residential in character and which, under the renewal plan therefor, is not to be redeveloped for predominantly residential uses; * * *

Plaintiff failed to take into consideration other sections and amendments of the act which provide for exceptions to the rule. If there had been no exceptions and amendments to the act, plaintiff would be correct in his contention, because when the Housing Act was first written in 1949 there was no provision for allocation of funds for redevelopment of nonresidential areas.

The act has been amended on several occasions by Congress and § 413 of the Housing Act of 1959 has the following exception which appears immediately after the law quoted above and relied on by the plaintiff.

> *Provided, That if the governing body of the local public agency determines that the redevelopment of such an area for predominantly nonresidential uses is necessary for the proper development of the community, the administrator may extend financial assistance under this title for such project.* * * * (Emphasis added.)

A review of the legislative history of the act will be helpful in determining the issue before the Court and demonstrates Congressional policy and intent with reference to financial assistance to downtown urban areas which are predominantly nonresidential.

42 U. S. C. § 1460 had its birth in the Housing Act of 1949, 42 U. S. C. 1450 et seq. The 1949 act made no provision for allocation of federal funds for redevelopment of nonresidential areas.

In 1954 the Housing Act was amended, August 2, 1954, C. 649, Title III § 311, 68 Stat. 626, and the following provision inserted:

> * * * and provided further, that financial assistance shall not be extended under this title for any project involving slum clearance and redevelopment of an area which is not clearly predominantly residential in character unless such an area is to be redeveloped for

predominantly residential uses, except that, where such an area contains a substantial number of slum, blighted, deteriorated or deteriorating dwellings or other living accommodations, the elimination of which would tend to promote the public health, safety and welfare in the locality involved and such area is not appropriate for redevelopment for predominantly residential uses, the Administrator may extend financial assistance for such a project, but the aggregate of the capital grants made pursuant to this title with respect to such projects shall not exceed 10 per centum of the total amount of capital grants authorized by this title.

This amendment was embodied in 42 U. S. C. 1460. The committee reports on this amendment are found at 1954 U. S. Code Cong. & Adm. News, page 2757 et seq. With this amendment Congress took the first step toward extending the limits of urban redevelopment.

In 1955, 42 U. S. C. § 1460 was once again amended. A further proviso was added, reading:

Where land within the purview of subparagraph (1) (ii) or (1) (iii) hereof (whether it be predominantly residential or nonresidential in character) is to be redeveloped for predominantly nonresidential uses, loans and advances under this title may be extended therefor if the governing body of the local public agency determines that such redevelopment for predominantly nonresidential uses is necessary and appropriate to facilitate the proper growth and development of the community in accordance with sound planning standards and local community objectives and to afford maximum opportunity for the redevelopment of the project area by private enterprise * * * Aug. 11, 1955, C. 783, Title I, § 106(c), 69 Stat. 637.

The House report on this bill (H. R. 913) stated:

Subsection (c) would add a provision to section 110 (c) of the Housing Act of 1949 which would authorize

loans and advances to be made under the slum clearance and urban renewal program to assist in the redevelopment of either predominantly open land or open land for industrial or other nonresidential uses. 1955 U. S. Code Cong. & Adm. News, p. 2905.

The Senate report (SR 404) amplified on this:

> This provision for assistance to redevelopment for nonresidential uses or industrial uses will be used for such areas as are found in many communities adjacent to railroads or other industrial property. Under the present law, land which is not predominantly residential in character cannot (except in certain limited cases) be developed for industrial or other nonresidential use. 1955 U. S. Code Cong. & Adm. News, p. 2922.

Thus, the Housing Act was extended a step further into the nonresidential area.

The next amendment of § 1460 took place in 1956, Aug. 7, 1956, C. 1029, Title III, § 302(a)(2), (b), (c), (d), 70 Stat. 1097. This amendment, generally speaking, consolidated the previously enacted provisions relating to slum clearance redevelopment with those relating to rehabilitation and conservation. As amended, § 1460 read:

> Financial assistance shall not be extended under this subchapter with respect to any urban renewal area which is not clearly predominantly residential in character unless such area will be a predominantly residential area under the urban renewal plan therefor; *Provided*, That, where such an area which is not clearly predominantly residential in character contains a substantial number of slum, blighted, deteriorated, or deteriorating dwellings or other living accommodations, the elimination of which would tend to promote the public health, safety, and welfare in the locality involved and such area is not appropriate for predominantly residential uses, the Administrator

> may extend financial assistance for such a project, but the aggregate of the capital grants made pursuant to this subchapter with respect to such projects shall not exceed 10 per centum of the total amount of capital grants authorized by this subchapter.
>
> In addition to all other powers hereunder vested, where land within the purview of clause (1)(ii) or (1)(iii) of the first paragraph of this subsection (whether it be predominantly residential or nonresidential in character) is to be redeveloped for predominantly nonresidential uses, loans and advances under this subchapter may be extended therefor if the governing body of the local public agency determines that such redevelopment for predominantly nonresidential uses is necessary and appropriate to facilitate the proper growth and development of the community in accordance with sound planning standards and local community objectives and to afford maximum opportunity for the redevelopment of the project area by private enterprise. * * *

Having taken these two steps toward expanding the Housing Act into redevelopment of nonresidential areas, Congress took a large stride forward in 1959. In that year § 1460 was once again amended, Sept. 23, 1959, Pub. L. 86-372, Title IV, § 413, 73 Stat. 675, 677, whereby virtually the entire language heretofore quoted was eliminated, and the following substituted:

> Financial assistance shall not be extended under this subchapter with respect to any urban renewal area which is not predominantly residential in character and which, under the urban renewal plan therefor, is not to be redeveloped for predominantly residential uses; *Provided*, That, if the governing body of the local public agency determines that the redevelopment of such an area for predominantly nonresidential uses is necessary for the proper development of the community, the Administrator may extend financial

assistance under this subchapter for such a project; *Provided further*, That the aggregate amount of capital grants contracted to be made pursuant to this subchapter with respect to such projects after September 23, 1959, shall not exceed 20 per centum of the aggregate amount of grants authorized by this subchapter to be contracted for after such date.

Plaintiff's complaint does not recite that portion of 42 U. S. C. § 1460 beginning with the phrase, "*Provided*, That if the governing body." There is no allegation in the complaint that the City of Cleveland has not made an appropriate determination that redevelopment of the Erieview area is necessary for the proper development of the community. A review of plaintiff's reply brief indicates that the City did make such a determination by ordinance adopted December 12, 1960.

Section 1460 underwent its latest amendment in 1961, at which time the percentage limitation for nonresidential areas was raised from 20% to 30%. June 30, 1961, Pub. L. 87-70, Title III § 308, 75 Stat. 166, 168, 172.

The committee commentary to this last amendment is most illuminating. It reads:

> Section 309 would permit 30 percent instead of 20 percent of urban renewal grant authority to be used for the renewal of areas not filling the predominantly residential requirement of the law.
>
> Urban renewal project areas presently are required to be "predominantly residential" in character either before or after renewal, except that 20 percent of available urban renewal grant funds may be devoted to projects without regard to this requirement. In addition, exceptions to the requirement are provided for disaster areas and for certain projects in the vicinity of colleges or universities. Another exception is to be found in the recently enacted Area Redevelopment Act (Public Law 87-27), to stimulate in-

dustrial and commercial development in depressed areas.

Originally, the Housing Act of 1949 made no provision for such exceptions, as urban renewal was regarded almost solely as a tool for the removal of slums and the provision of good residential neighborhoods. Over the years, however, it became clear that the construction of good neighborhoods was intimately related to the economic health of the community. The revitalization of industrial, commercial and downtown areas so as to attract job-creating private investment was realized as a necessary goal to which urban renewal could make a substantial contribution. Consequently, a 10 percent exception to the "predominantly residential" requirement was put into the Housing Act of 1954, and this was raised to 20 percent in the Housing Act of 1959. Under existing law this amounts to $313.6 million. Practically all of this has been committed at this time.

With growing attention to the needs for downtown renewal, it appears necessary to increase the exception to provide for a greater number of projects of this type. The economic, institutional, and cultural bases of community life are increasingly recognized as necessary to the creation and continuing existence of good homes in sound urban neighborhoods. 1961 U. S. Code Cong. & Adm. News, p. 1952.

An interesting commentary on this question of nonresidential redevelopment is found in the committee report on the Area Redevelopment Act:

> While the primary purpose of the urban renewal program is the elimination of residential slums, there is a growing recognition of the importance of nonresidential slum clearance projects. Sound city planning often requires that rundown business districts be rehabilitated or cleared and redeveloped, if the city is to fulfill its proper functions. Such redevelopment provides new opportunities for employment and business

> expansion. Moreover, experience has shown that public revenues can be increased manyfold by eliminating blight and returning land to its highest and best use. By so increasing tax revenues, such projects enable the local government to meet its many other responsibilities toward its citizens. 1961 U. S. Code Cong. & Adm. News, p. 1581.

There is a very clear picture here of the development of the law regulating availability of federal funds for redevelopment of nonresidential areas. The Housing Act of 1949 did, in fact, prohibit such grants. Five years later a restricted right to make such loans was established. Again, after a five-year lapse, the percentage of funds so available was doubled and the standards for redevelopment of nonresidential areas were substantially revised towards the ends of liberality. Within the past year § 1460 was again amended, so that presently almost one-third urban renewal funds may now be allocated to nonresidential areas. With this last amendment came a clear declaration of congressional policy and intent that the act was meant to provide for financial assistance in the redevelopment of downtown nonresidential areas, such as Erieview. In fact, it is said in the City of Cleveland's reply brief, practically every large city in the country has obtained, or is in the process of obtaining, urban renewal loans to redevelop nonresidential areas, under the provisions of the Act.

It is the opinion of the Court that the statutory provisions relied on by plaintiff, contrary to his contention, do provide for financial assistance by the federal government for the redevelopment of downtown nonresidential areas, such as Erieview. The plaintiff has recited only a part of a statutory provision out of the context of the whole, which leads to his misinterpretation of the act. The

plaintiff is not sustained in his contention that the City of Cleveland, by entering into agreements for financial assistance with reference to Erieview with the Public Housing Administration, has created an illegal debt.

It is the finding of this Court that the plaintiff's complaint does not state a cause of action under the federal statute recited therein; that the plaintiff is not entitled to the relief requested; that the defendants' motions to dismiss the complaint should be, and are hereby, granted.

The Court having granted the order of dismissal on the basis that the complaint failed to state a claim upon which relief might be granted, does not deem it necessary to rule on the questions of jurisdiction raised by the defendants.

APPENDIX B.

Opinion of the United States Court of Appeals for the Sixth Circuit.

Decided December 19, 1962.

Before: O'SULLIVAN and SMITH (U. S. Circuit Judge, Second Circuit, sitting by designation) and BOYD, District Judge.

SMITH, Circuit Judge. The City of Cleveland is proceeding with federal assistance to redevelop through its "Erieview" project a commercial area for commercial uses. The Cleveland City Charter permits a taxpayer to institute proceedings to restrain "the misapplication of funds of the City, or abuse of its corporate powers, or execution or performance of any contract made in behalf of the City in contravention of law" after demand to institute such a suit has been made on the City Director of Law and he has refused. See Cleveland City Charter, Sections 87, 90. Plaintiff-appellant, as a taxpayer, brings such an action in federal court, alleging that the City has entered into an illegal contract with the United States for loan to the City of funds for urban renewal unauthorized by statute and a second illegal contract with the Erieview Corporation for sale to it of lands for redevelopment under the first contract. Federal question jurisdiction is claimed to exist under 28 U. S. C. 1331. Plaintiff's motion pursuant to 28 U. S. C. 1653 to amend his complaint to allege the jurisdictional amount more fully is granted. Since under local law he sues in the right of the municipality, the amended allegation of financial loss to it appears to be sufficient. It may also be assumed that plaintiff presents a case or controversy suitable for determination in federal court. *Cf. Everson v. Board of Education*, 330 U. S. 1 (1947); *Doremus v. Board of Educa* [illegible] U. S. 429, 343-35 (1952).

The land which the Erieview Corporation is to redevelop is part of a Cleveland project known as "Erieview" which is aimed at redeveloping a predominantly commercial area for commercial uses. This is the same project unsuccessfully attacked in *Grisanti v. City of Cleveland*, 179 N. E. 2d 798 (Ohio C. P. 1961), *aff'd* 181 N. E. 2d 299 (Ohio Ct. App. 1962), *appeal dismissed*, 173 Ohio State. 386, 182 N. E. 2d 568 (1962), *appeal dismissed for want of a substantial federal question*, 31 U. S. L. W. 3154 (U. S. Sup. Ct. November 6, 1962). The statute which the apellant here claims to have been violated by the federal grant of funds is 73 Stat. 675 (1959), as amended, 42 U. S. C. 1460 (c) which provides as here relevant:

> "Financial assistance shall not be extended under this subchapter with respect to any urban renewal area which is not predominantly residential in character and which, under the urban renewal plan therefor, is not to be redeveloped for predominantly residential uses: *Provided*, That, if the governing body of the local public agency determines that the redevelopment of such an area for predominantly nonresidential uses is necessary for the proper development of the community, the Administrator may extend financial assistance under this subchapter for such a project: *Provided further*, That the aggregate amount of capital grants contracted to be made pursuant to this subchapter with respect to such projects after September 23, 1959, shall not exceed 20 per centum of the aggregate amount of grants authorized by this subchapter to be contracted for after such date."

The District Court for the Northern District of Ohio, Ben C. Green, J., granted a motion to dismiss the complaint for failure to state a claim on which relief could be granted filed by the defendant City of Cleveland in which the other defendants joined, and plaintiff appeals. The Court did not pass on other questions of jurisdiction and

governmental immunity in view of the dismissal. We affirm the judgment dismissing the action.

The District Court concluded from a reading of the statute and the relevant legislative history that a contract such as the one between the City and the United States was authorized by the statute, and that the plaintiff had therefore made no showing of illegality. This contract being proper, the subsidiary contract between the City and Erieview Corporation was also found to be legal.

Appellant's efforts to reword the statute so as to prohibit the contracts in suit are unavailing. The meaning of the statute is quite plain as it is written, even without the strong reinforcement found in the legislative history referred to in Judge Green's memorandum below. The provision in terms authorizes redevelopment of "such an area." This plainly refers to "any urban renewal area which is not predominantly residential * * * and which * * * is not to be redeveloped for predominantly residential uses * * *." Appellant argues that the statute should be restated in positive terms by eliminating the "nots." This may be an interesting exercise in semantics, but quite plainly alters the meaning of the language as used, which is that a limited portion (at that time 20%) of the funds only was to be available for redevelopment of areas neither predominantly residential in origin nor in ultimate use. No claim has been advanced that the requisite determination has not been made by the governing body of the local public agency or that the aggregate amount of capital grants contracted to be made under the proviso in question exceeds 20 per centum of the aggregate amount under the subchapter. Appellant's contentions on interpretation of the statutory provisions border on the frivolous.

Judgment affirmed."